

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)	
)	
Federal-State Joint Board on Universal Service)	CC Docket No. 96-45
)	
Comments on Rules Relating to High-Cost Universal Service Support and the ETC Designation Process)	FCC 03J-1
.....)	

COMMENTS
of the
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

I. INTRODUCTION

The Washington Utilities and Transportation Commission (WUTC) files these comments pursuant to the Federal Communications Commission’s (Commission) Solicitation for Comments in CC Docket No. 96-45. Solicitation for Comments, 68 Fed. Reg. 10429 (2003). Our comments are in the form of responses to questions raised by the Commission in its Solicitation for Comments. The questions (repeated or paraphrased for ease of reference) and our responses are arranged according to the numbered sections as they appear in the Solicitation for Comments. Rather than respond to all questions, we respond only where we have specific information to share or specific interest concerning policy or practice.

Before turning to the Commission’s specific questions, we note that the Commission has requested comments that “specifically address how any proposed modifications will further, or impede the Act’s goals of *maintaining* universal service and fostering competition.” 68 Fed. Reg., at 10430 (italics added). The WUTC believes the better statement of the Act’s goals with respect to universal service are set forth in Section 254(b), which states: “The Joint Board and the Commission shall base policies for the *preservation and advancement* of universal service on the following principles . . .” 47 U.S.C. § 254(b)(italics added). In passing the Act, Congress plainly was looking beyond mere maintenance of universal service.

As a preliminary matter, we note also the Commission’s many references to “competitive eligible telecommunications carriers” (CETCs) and “rural incumbent local exchange carriers.” Congress did not distinguish between one type of ETC and another, and it did not refer to “rural incumbent local exchange carriers” in either Section 214(e) or Section 254. When Congress mentioned “rural telephone companies” in Section 214,

it did not narrow that reference to incumbent carriers. *See* 47 U.S.C. §§ 153(37), 214(e)(2), (5).

II. WUTC RESPONSES TO QUESTIONS IN THE NOTICE

Notice Section 4

To what extent will support for competitive ETCs likely grow over time? How does the growth rate compare to the ILEC growth rate?

We are concerned with what we infer to be a review of the universal service program from the perspective of carriers, rather than customers. This question, for example, can be seen as implying it is important to customers whether the support is for their service from one ETC or another. As the Fifth Circuit Court of Appeals has stated, the purpose of 47 U.S.C. § 254 is to support customers, not companies.¹ As stated above, Congress did not distinguish between ETCs.

Because the purpose of the Act is not to divide and segment telecommunications activities through increased regulatory distinctions, but to achieve deregulation through competition while preserving and advancing universal service for the benefit of all customers, we think the proper question is: To what extent will support for service to customers grow over time? The answer to that question is that it will grow if that is necessary to provide sufficiency of support. 47 U.S.C. § 254(e). It will also *appear* to grow as support is made explicit. *Id.*

In addition to considering the impact of increased numbers of ETCs, the Joint Board may want to look at other factors. For example, it could look at distribution decisions that resulted in large amounts of support going to a very few states, and also resulted in Qwest receiving no support for exchanges located in the mountainous West where it often serve no more than one to two thousand customers in areas larger than Rhode Island. For example, Qwest serves a large portion of Okanogan County, which borders Canada and contains part of the North Cascades mountain range. The county has a population per square mile of 7.5 people (39,564 residents in 5,268 square miles), one-sixth the density of Mississippi, and one-eleventh the density of Alabama, two states that receive considerable high-cost support.

The lack of support is a result of how the cost of Qwest's service to Seattle, over two hundred miles from Okanogan County, is used to reduce the apparent cost of providing service in rural areas, and the reason for substantial support for carriers in Alabama and Mississippi is due largely to the absence of any large cities whose costs would otherwise be averaged with the costs of rural areas. Yet anyone who has traveled in the three states knows that Qwest encounters actual high-cost circumstances (e.g.,

¹ *Alenco Communications, Inc. v. Federal Communications Commission*, 201 F.3d 608, 620 (5th Cir. 2000). "The Act only promises universal service, and that is a goal that requires sufficient funding of customers, not providers."

mountains) and serves in a very low-revenue location.² In comparison, carriers in Alabama and Mississippi do not encounter mountains, and while they may encounter other geographic obstacles, they do not encounter the low-revenue circumstances to a degree that warrants such a disparity between support for carriers in those states and no support at all for Qwest. It may be that the disparity could be addressed in a way that might result in a reduction in fund size.

Notice Section 5.

What economic and business factors affect competitive entry in rural and high-cost areas?

The economic factor that most affects competitive entry in rural areas is the very low potential for revenue. The low density of population means the revenue per unit of plant and equipment (be it underground cable, cell towers, or a combination of the two) will be below what can be earned in suburban and urban areas. Many rural areas are not high-cost either due to geographic features (e.g., mountains) or because of difficulties experienced in construction. For example, in rural areas the cost per-mile of placing underground cable is generally lower than that in urban areas because there are fewer obstacles, including roads, sidewalks, buried electrical and water facilities, sewer facilities, and many other similar obstacles to take into account. The cost per mile for cabling in a rural area may be only \$20,000 per mile, but in a city like Seattle, the cost may be several times higher per mile.

Areas that are high-cost, such as mountainous areas, are also quite likely to be low-revenue locations as well. Both high-cost and low-revenue circumstances discourage competitive entry. Even wireless companies experience higher costs in mountainous areas. While they do not encounter the cost of placing large amounts of cable in mountainous terrain, they must have more towers to provide a signal in uneven terrain.

Is there a relationship between competitive entry and receipt of high-cost support?

² Where many would expect the term “high-cost,” we have often used “low-revenue” in these comments. Federal and state universal service support is generally referred to as “high-cost support.” In some locations, particularly mountainous areas, the cost of construction may be higher than average. However, not all “high-cost” service is provided in locations where construction costs are above average. More accurate descriptions would be “high-cost per customer” support or “low-revenue” support because companies that receive this support are expected to serve locations where there are very few customers to bear the cost of the necessary facilities. For example, the WUTC provides state support to the company that serves the Palouse exchange because we have determined that it costs an average of \$71.67 per-line, per-month, to provide service but a residential customer’s price, including the federal access charge, is only \$18.00 per month. The Palouse exchange, an area of rolling hills characterized by a small number of very large wheat farms, is not difficult terrain in which to construct facilities; it is merely characterized by a small number of customers.

Yes. To the extent support is needed to ensure a reasonable return on investment, no company will enter a market where it knows it cannot earn a reasonable return on investment. This is especially so if the company is aware that it will face a competitor with a stream of revenue not available to the company contemplating competitive entry.

Lack of support alone does not mean that a company will not enter a rural area. Wireless companies operate in rural areas without support. However, in those areas service is generally limited to main roads and towns and small cities. Those locations offer revenue that is not available to warrant construction of cell towers in less busy or less densely populated locations.³ As we determined when we granted ETC designation to RCC Minnesota, the issue before us was whether we wanted cellular coverage in low-revenue locations sooner rather than later, in the next few years or in 2020.⁴

The results of competitive entry with equal access to support are also worth noting. Once carriers experience the same revenue possibilities, then they compete on market forces, such as service, options, and innovation in features.⁵

Notice Section 6.

Is there line growth in high-cost areas? Is that line growth secondary lines or new end users?

No comment.

Is connection growth occurring primarily in one technology or another?

No comment.

Are companies without high-cost support experiencing connection growth?

In Washington, there is a rural telephone company that began providing service to approximately 110 homes in 2000. It is not receiving federal support, despite petitioning

³ *In The Matter Of The Petition Of RCC Minnesota, Inc., d/b/a Cellular One, For Designation as an Eligible Telecommunications Carrier*, Washington Util. & Transp. Comm'n. Docket No. UT -023033, Order Granting Petition For Designation As An Eligible Telecommunications Carrier (August 14, 2002) at ¶¶ 21, 39 and n.19.

⁴ *Id.* at ¶ 48.

⁵ *See* Comments of the Washington Utilities and Transportation Commission, *In the Matter of National Telecommunications Cooperative Association Request for Amendment of the Commission's Rules To Define "Captured" and "New" Subscriber Lines for Purposes of Receiving Universal Service Support*, RM No. 10522, p. 2, Sept. 23, 2002.

the Commission for support.⁶ The company serves homes that were once in the study areas of Qwest and Verizon, but where those companies never placed facilities.

Notice Section 7.

To what extent do wireless or other technologies represent the addition of complementary service rather than substitution for traditional wireline service in rural and high-cost areas?

In observations chronicled in the trade press on this proceeding, some have characterized the issue before the Joint Board as a choice between a new way to proceed with universal service support, and the traditional program of support that developed over decades prior to the Telecommunications Act. We are concerned that some have elevated “tradition” from a fact to an argument for maintaining preferences for monopoly wireline service, to the exclusion of competition and the advancement of universal service. While the tradition was one of universal service supplied by a single wireline provider in rural and high-cost areas, it is important to bear in mind that Congress intends that local telecommunications will change.⁷

We do not know to what extent subscription to wireless service in rural and high-cost areas represents an addition of complementary service rather than a substitute for service. We have no basis to believe it is substantially different than the 1.2 percent substitution rate reported by the Commission.⁸

Congress has stated the policy for universal service clearly, and whether customers of one technology are substituting or complementing service from another technology was not included by Congress as a policy consideration. If anything, Congress expects customers in rural areas to complement and substitute in the same manner as urban customers.

⁶ *In re the petition of M&L Enterprises, Inc. d/b/a Skyline Telephone Company Petition for Waiver of Sections 36.611, 36.612 and 69.2(hh) of Commission Rules*, CC Docket No. 96-45.

⁷ “The rural companies point out that wireless universal service is not as reliable as traditional wireline service. We are troubled by the word ‘traditional.’ The Act is intended to promote change, as our decision does, in accord with national and state policies.” *In the Matter of the Petition of United States Cellular Corporation; USOC of Washington RSA-4, Inc.; Western Sub-RSA Ltd. Partnership; McDaniel Cellular Telephone Company; Oregon RSA No. 2 Limited partnership; United States Cellular Operating Co. Of Richland; Yakima, Washington MSA Limited Partnership for Designation as Eligible Telecommunications Carriers*. Washington Util. & Transp. Comm’n. Docket No. UT -970345, Third Supplemental Order Granting Petition for Designation as an Eligible Telecommunications Carrier (January 27, 2000), *affirmed sub nom* Washington Independent Telephone Association et al v. Washington Utilities and Transportation Commission, Supreme Court of Washington, No. 72428-8 (March 20, 2003) (2003 WL 1339064(Wash.)).

⁸ Telephone Subscribership in the United States, p. 2 (November 8, 2002).

Access in rural and high cost areas--Consumers in all regions of the Nation, including low-income consumers and those in rural, insular, and high cost areas, should have access to telecommunications and information services, including interexchange services and advanced telecommunications and information services, that are reasonably comparable to those services provided in urban areas and that are available at rates that are reasonably comparable to rates charged for similar services in urban areas.

47 U.S.C. § 254(b)(3)

Congress did not address the use that is made of the service, and we do not see any good that can come from delving into the use made of supported service by individual customers. The report of Telephone Subscribership, coupled with the number of active wireless and satellite telephones, indicates that complementary service rather than substitution is the norm between wireless and wireline technology.

Even if the Joint Board recommends that only a single connection per consumer should be supported (addressed in Notice Sections 20 to 25), there is no reason to delve into whether a customer has made a substitution or is purchasing a complementary service.

Notice Section 9.

Does universal service for multiple ETCs result in “inefficient competition” and impose greater costs on the universal service fund? Do the current rules promote “inefficient competition?” Do the rules promote “efficient competition” in high-cost areas?

No comment.

Do the current rules promote competitive neutrality and properly balance statutory goals of competition and universal service? Do the current rules have the effect of supporting the costs of two or more networks serving the same area concurrently? If so, is that consistent with Section 254 of the Act?

Universal service is based on a decision by Congress that cost alone should not determine price in rural, insular, and high-cost areas. The same Congress determined that there should be competition in local telecommunications service, as there is in long-distance service. One of the effects of competition, if not the very definition of competition, is the availability of two or more providers.

The majority of service in rural, insular, and high-cost locations is provided by carriers that are non-rural telephone companies (e.g., Verizon serving areas like the Palouse exchange in Washington. *See* n.2). The statute requires that there will be two ETCs in the majority of rural, insular, and high-cost areas because state commissions

must designate additional carriers for areas served by non-rural companies. 47 U.S.C. § 214(e)(2). Once designated, those carriers are eligible to receive universal service support. 47 U.S.C. § 214(e)(1). If support for two or more ETCs results in support for two or more networks serving the same area concurrently, that is the result Congress created.

State commissions may exercise some discretion with respect to areas served by rural telephone companies. Each state commission may, under the terms provided by Congress, determine if it should designate additional ETCs for areas served by rural telephone companies. However, when a state does determine that it would be in the public interest to designate one or more additional ETCs for an area served by a rural telephone company, the result is the same as when it designates an additional ETC in an area served by a non-rural telephone company, as clearly anticipated by Congress.⁹

Commission rules do not promote competitive neutrality so much as Congress mandated it. Congress said that ETCs “shall be eligible to receive universal service support in accordance with section 254.” 47 U.S.C. § 214(e)(1). Congress requires states to designate more than one ETC for areas not served by rural telephone companies.¹⁰ Where state commissions determine it is in the public interest to designate additional ETCs for areas served by rural telephone companies, the additional ETC is eligible to receive universal service support. *Id.*¹¹ Competitive neutrality, to the extent that it is created by providing support to all ETCs, does not depend upon the Commission’s adoption of the principle of competitive neutrality¹² because Congress itself created neutrality with respect to eligibility to receive universal service support.

Whether support for more than one company in a rural, insular, or high-cost area is consistent with 47 U.S.C. § 254 does not determine the number of ETCs that are eligible for universal service support. As addressed above, Congress determined that all ETCs that offer the services under 47 U.S.C. § 254(c) are eligible for support. What 47 U.S.C. § 254 does require is that the carrier that receives support may use it only for the

⁹ The existence of the “rural exemption” for interconnection may also lead to two or more networks. 47 U.S.C. § 251(f). If sustained for a rural telephone company in any rural, insular, or high-cost area, the effect of such an exemption would require any other carrier that wanted to operate in the area to build a complete network.

¹⁰ The assumption is often made that the “first” ETC is the incumbent. However, that is not required by law and is not always the case in fact. In Washington, United States Cellular was designated an ETC for the area described by the Qwest Longview exchange in 1997, and Qwest, an incumbent in Longview, did not seek or receive ETC designation for that exchange until 1998. In 2002, both RCC Minnesota and Inland Cellular were designated as ETCs for the areas described by Qwest’s Dayton, Pomeroy, Walla Walla, and Waitsburg exchanges, while Qwest is the incumbent but not an ETC in any of those exchanges.

¹¹ Note that Congress made no distinction between ETCs; it did not create classes of ETCs such as incumbent ETCs and competitive ETCs. Incumbency is not mentioned in 47 U.S.C. § 214(e).

¹² *In the Matter of Federal-State Joint Board on Universal Service*, CC Docket No. 96-45 (May 8, 1997) (“First Report and Order”) ¶ 47.

purposes for which the support is provided and that the support should be explicit and sufficient “to achieve the purposes” of Section 254.¹³ 47 U.S.C. § 254(e). The purposes of 47 U.S.C. § 254 are the preservation and advancement of universal service, and Congress provided principles on which the “Joint Board and Commission *shall* base policies” for preservation and advancement of universal service. 47 U.S.C. § 254(b)(italics added).

Notice Section 10.

To what extent do costs of competitive ETCs differ from costs of incumbents?

No comment.

Do the Commission’s rules create an unfair advantage for ETCs with lower costs?

Implicit in this question is the idea that some advantages may not be fair. Perhaps what the Commission is wrestling with is a situation in which it must determine if it will let perfection be the enemy of the good. As will be apparent below, the Commission must choose between retaining the present rules that peg support to one ETC’s costs in each service area established by a state commission, or changing the rules to provide support based on each ETC’s costs. Each approach has advantages and drawbacks, and depending on how participants are affected, some may assert there is unfairness.

Should support vary depending on an ETC’s technology platform?

The WUTC is not opposed to support that varies with an individual ETC’s costs, but the decision to switch from the current mechanism that is based on one ETC’s costs to one based on all ETCs’ costs should be made without regard to technology. We believe Congress expects deregulation, and one way to achieve that is to reduce the number of categories created for the purpose of applying varied rules. Distinctions based on technology that are not compelled by that technology (e.g., issues related to spectrum) would be a step backward.

What is the effect of competitive entry in rural and non-rural study areas on the amount of support that an incumbent ETC receives?

We address this in response to a question in Notice Section 11.¹⁴

¹³ See *Texas Office of Pub. Util. Counsel v. Federal Communications Commission*, 183 F.3d 393, 412 (5th Cir. 1999) (“The term ‘sufficient’ appears in § 254(e), and the plain language of § 254(e) makes sufficiency of universal service support a direct statutory command rather than a statement of one of several principles.”).

¹⁴ In Section 10, the Notice refers to study areas in relation to competitive entry, but 47 U.S.C. § 214(e)(5) creates geographic areas (“service areas”) established by state commissions for the purpose of determining universal service obligations and support mechanisms.

Notice Section 11.

Should support for competitive ETCs be based on competitors' costs rather than the incumbents?

The WUTC does not have a position on this. As we stated above, 47 U.S.C. § 254 requires that a carrier that receives support may use it only for the purposes for which the support is provided and that the support should be explicit and sufficient “to achieve the purposes” of Section 254. 47 U.S.C. § 254(e).

In addition, there are circumstances in which it may not be clear which ETC is the competitor. As we pointed out in our response to a question from Notice Section 9, there is not always an incumbent that is an ETC in a service area. While the Commission has chosen to distinguish between incumbents that have been designated as ETCs and non-incumbents, that distinction will not provide any guidance where there is not an incumbent ETC. *See* Footnote 10, *supra*.

What would be the effect on competition of paying different amounts to ETCs for each customer or connection?

The better question would be, will competition under these circumstances produce any of the usual benefits of competition in unsupported markets? That is, will competition in a non-market environment (an environment where each participant receives universal service support) drive prices toward cost? Will it spur innovations? Will it result in pressure for improved customer service?

The current scheme provides a level of support for one ETC that permits it to meet its obligations and have an opportunity to earn a fair rate of return on its investment through explicit, sufficient support. For all other ETCs, the support is either insufficient or too generous. Where it is insufficient, the competitor will likely exit the area because it is losing money. Where support is too generous, it must nevertheless be invested only for the provision, maintenance, and upgrading of facilities and services for which the support is intended. 47 U.S.C. § 254(e). This may result in a competitive advantage, but it may also result in better service or the fulfillment of the Congressional principle found in 47 U.S.C. § 254(b)(3). For example, if the current rules that provide support to all ETCs based on one ETC's costs result in more than sufficient support for an ETC that has a limited network in a rural, insular, or high-cost area, then the result may be a more rapid expansion of that ETC's network than would occur if it received only sufficient support.

If costs were to be determined for “competitive” ETCs, what costs should be used to determine support?

The costs that should be used are those necessary to provide service throughout the service area as required by 47 U.S.C. § 214(e)(1).

Should support be based on embedded or forward-looking costs for competitive ETCs?

No comment.

What reporting requirements would be necessary to determine costs for all ETCs?

Non-rural company costs are determined on a forward-looking basis today, and rural telephone company costs are determined on embedded costs. An advantage of forward-looking cost models as the means of determining support levels rather than embedded costs is that on-going reporting of costs is not required.¹⁵

Would it be appropriate to determine costs on a per-connection basis?

We observe that a determination that is not calculated on a per-connection basis would limit comparisons between carriers of differing sizes that provide service to differing numbers of customers.

Should per-connection support reflect solely an ETC's connection count or some combination of multiple ETCs' connection counts?

The Commission once allotted support on a geographic basis, and the total support for a geographic area was divided between ETCs based on each ETC's number of connections. Its present rules distribute support for non-rural incumbent local exchange carriers (ILECs) that are ETCs, based on forward-looking economic costs. For an ETC that is not an incumbent and serves an area served by a non-rural ILEC, the support is based on the number of connections times the support per-connection in the service area received by the non-rural ILEC that is an ETC. 47 CFR Part 54, Subpart D (§ 54.301 *et. seq.*). Rural ILECs receive support based on embedded costs, and ETCs that are not rural ILECs and that serve in areas that are served by rural ILECs receive support based on the number of connections times the support per-connection in the service area. *Id.*

Congress mandated support for service to ensure the availability of service at affordable rates (i.e., below-cost rates). Congress recognized there is no reason to provide support for service unless it is sufficient to provide the service. 47 U.S.C. § 254(e). The alternative is the worst of both worlds – support is provided but the amount of support is insufficient to reduce prices to affordable levels, so the carrier must either set the price above what is affordable, or not provide service because the level of support will not cover the cost of service. The Joint Board should recommend that the Commission choose a policy that will not result in the worst of both worlds.

¹⁵ The WUTC has determined state support for non-rural companies based on forward-looking costs, and state support for rural incumbent local exchange companies based on embedded costs. We await the outcome of this proceeding before determining our next effort with respect to state universal service.

What are the alternatives to calculating support on a per-connection basis?

No comment.

Notice Section 12.

Where there are multiple ETCs, should the support be based on the lowest-cost provider's costs, in order to promote efficiency?

Because the Notice did not say what type of efficiency is sought, it is difficult to respond to this question. The effort to determine which ETC has the lowest costs would erase the administrative efficiency that comes from using forward-looking cost models and the efficiency that comes from using known costs for one ETC as a proxy for the costs of ETCs with unknown costs.

The Notice also does not indicate what is provided by the lowest-cost ETC. In some service areas, there are ETCs that serve nearly one hundred percent of households and businesses, and other ETCs that have just begun to offer services and serve relatively few of the total number of customers in the service area. The Notice does not indicate whether the costs to be considered are per-connection or total costs in the service area. An ETC serving a relatively few customers might have low total costs and high per-connection costs, and neither may be a good choice on which to base the level of support that will be portable. (If sufficient support is not determined for each ETC, then support must be portable.)

Notwithstanding the lack of specificity in the Notice, once a determination is made about the lowest-cost ETC's costs, support based on that ETC's costs will likely result in other ETCs in the area either reducing costs so that they can earn an acceptable rate of return, or leaving the service area. We do not know if either or both of these results, or neither of the results, are considered "efficient" as the term is used in the Notice.

The reason an ETC might leave the service area is because it must offer supported services *throughout* the service area for which it is designated. 47 U.S.C. § 214(e)(1)(A). However, if the amount of support available is insufficient to offer services throughout the area for which an ETC is designated, it may have no choice but to leave a service area.

For example, if a fixed wireless carrier can serve an area at lower cost than other ETCs, should support to all carriers serving that area be based on the cost of fixed wireless service?

Congress stated that the Joint Board and the Commission shall base policies for the preservation and advancement of universal service on several principles. 47 U.S.C. § 254(b). One of those principles is sufficiency of support. Regardless of technology, a decision to base portable support on the costs of the lowest-cost ETC could result in some

ETCs receiving support that is insufficient to reduce prices to affordable levels (through “buying down” costs). However, if the Commission determines that only one connection to the network is necessary to preserve and advance universal service, and if it determines that sufficient support is provided if only one ETC can reduce prices to affordable levels with the amount of support that is provided, then support could be based on the lowest-cost ETC’s costs without regard to the impact on other ETCs.

To what extent should quality of service be considered when determining if support should be based on the lowest-cost provider?

The Commission may, under the discretion provided by Congress, determine that it is important for the level of support provided to ETCs in any service area to be sufficient to construct and maintain facilities that provide the highest quality service (by whatever measurement). In the alternative, the Commission could adopt rules that provide support sufficient to ensure service that delivers the Commission’s list of nine services at an adequate level of service. 47 U.S.C. 254(b)(1).

If support is based on the costs of the lowest-cost provider, what effect might this have on incumbent LECs with higher costs than ETCs ?

Assuming the incumbent LEC is not an ETC, there will be no effect.¹⁶ For example, a determination of support for the high-cost exchanges served by Qwest in Washington (an incumbent) that is based on the costs of either United States Cellular, RCC Minnesota, or Inland Wireless, will not affect Qwest because it is not an ETC in any of its high-cost exchanges in Washington.

In those instances where the incumbent is an ETC and it does not have the lowest cost of all ETCs in a service area, the effect will likely be varied. In some instances the difference between ETC costs may be minimal and the incumbent and any others with higher costs will likely find ways to reduce costs, or raise rates (through a rate case where required), or take both actions. In other circumstances, the difference in costs may be very great. Under those circumstances the higher cost ETCs will either have to raise rates or cease doing business in the service area.

Notice Section 13.

Could auctions be used to award support to the lowest bidder in an area for a period of time?

Assuming the auction and its results were in accord with 47 U.S.C. § 214(e) and 47 U.S.C. § 254, auctions could be used to award support to the lowest bidder in an area for a period of time.

How would geographic unit be determined?

¹⁶ See n.10.

Geographic units are established by state commissions. 47 U.S.C. § 214(e)(5).

Who would administer auctions and how frequently should they occur?

No comment.

What responsibilities should be imposed on the ETC that receives high-cost support?
Should it be required to meet service quality goals?

See comment immediately below.

How would auctions work with state authority to designate ETCs?

Congress gave authority to state commissions to designate ETCs and the statute requires designation of multiple ETCs in some areas, and permits it in other areas. 47 U.S.C. § 214(e)(2). Carriers designated as ETCs are eligible to receive universal service support. 47 U.S.C. § 214(e)(1).

Would auctions foster competition?

No comment.

What effect would auctions have on investment?

No comment.

Notice Section 14.

Should the Commission revise its rules for ETCs using UNEs? How?

No comment.

Notice Section 15.

Should there be a regular schedule of cost determinations?

No comment.

Should it be embedded or forward-looking?

No comment.

Commenters should address carrier of last resort obligations.

Congress requires all ETCs to offer supported services throughout the service area for which it is designated. 47 U.S.C. 214(e)(1).

Notice Section 16.

Should support be limited for a competitive LEC as it is for incumbents?

A limitation (“cap”) on support for any ETC is difficult to reconcile with the principle of sufficiency of support. 47 U.S.C. 254(b)(5) and (e).

Should the total support available to one ETC depend on the total amount available to another ETC?

No. Sufficient support must be provided to maintain affordable rates in areas where cost-based rates would result in rates that are not affordable. As stated above in response to questions in Notice Section 12, the Commission has some discretion to determine what Congress requires. The framework in which it makes that determination is provided by 47 U.S.C. § 214(e) and § 254, and the over-all policy goals of the Act, to deregulate local service, promote competition, and preserve and advance universal service.

Because an ETC must offer supported services throughout the service area for which it is designated, and because the only reason to offer supported services is to make services available at an affordable rate, one reasonable interpretation of the Act is that Congress intends all ETCs to receive sufficient support to enable each ETC to offer service at an affordable rate throughout its service area. It may be that the amount that is sufficient for one ETC is less than or greater than what is sufficient for another ETC, even in the same service area.

Comment on the potential benefits and costs of modifying the rules on stability, predictability, and sufficiency of the fund, and potential effects on competition.

All three considerations – stability, predictability, and sufficiency – should result from universal service rules based on the goals of the Act, and the provisions of 47 U.S.C. § 214(e) and 47 U.S.C. § 254. The purposes of the Act are deregulation of local service, competition, and preservation and advancement of universal service. It is the support mechanisms to preserve and advance universal service that should be specific, predictable, and sufficient. 47 U.S.C. 254(b)(5). If there is a transitional phase as part of any changes to rules, sufficiency of support must be maintained in order to assure affordable rates.

Notice Section 17.

Comment on growth of the fund resulting from loss of connections by rural ILECs.

No comment.

Notice Section 18.

Should the Commission change the method of determining the location of connections for wireless ETCs?

No comment.

Notice Section 21.

Would the goals of § 254 be better served if support were limited to single-connection residential service and single-connection business service, whether provided by an incumbent¹⁷ or an ETC?

The goal of section 254 is to preserve and advance universal service. For many decades, universal service has supported multi-connection residential service and multi-connection business service in high-cost areas.

Because support for multiple connections has been the norm for decades in rural, insular, and high-cost locations, one effect of supporting only single connections will be to increase costs for consumers and businesses that determine it is necessary to maintain or obtain more than one connection. We estimate in Washington that the price of a second connection could increase from as little as \$1.00 per month in some service areas, to as much as \$430.00 per month in some non-rural company service areas.¹⁸ Prices in areas served by rural telephone companies could increase as much as \$3,000 per month in one location, and more than \$100.00 per month in many locations.¹⁹ Some residents and businesses facing higher prices for additional connections may feel that the higher rates are not just, reasonable, and affordable. 47 U.S.C. § 254(i).

Our experience is that a decision to limit support to one connection would adversely affect businesses in rural, insular, and high-cost locations. Even small businesses have multiple connections so that they may speak to customers, process credit transactions, and place orders at the same time. If the effect is to drive small businesses from rural areas to suburban and urban areas of a state, the net effect on the state may not be great. The effect on the rural area, however, may be considerable. These effects could be measured in jobs lost, sales tax revenue lost, and reductions in property values and the consequent effect on road maintenance, educational investment,

¹⁷ Congress requires that support be provided only to ETCs. 47 U.S.C. § 254(e). See also n.11.

¹⁸ *In the Matter of Determining Costs for Universal Service*, Washington Util. & Transp. Comm'n. Docket No. UT-980311, Tenth supplemental order Determining Costs (1998), Appendix B.

¹⁹ *In the Matter of Disaggregation of Federal Universal Service Support*, Washington Util. & Transp. Comm'n. Docket No. UT-013058 and 023020, Order Rejecting Disaggregation Filings By Asotin Telephone Company And CenturyTel, And Directing Rural ILECs To File Disaggregation Plans With The Commission Not Later Than August 23, 2002 (2002), Attachment "Cost Inputs by Company."

and police and fire service. There might also be secondary effects; for example, population shifts away from rural areas also result in shifts of political influence as voting district boundaries are re-drawn.

Would limiting support to one connection be consistent with the “reasonably comparable” principle of § 254(b)(3)?

We have had before us issues related to support for multiple connections, but none that placed before us the legal issue of whether support for only one connection is consistent with 47 U.S.C. § 254. We have made decisions that result in support for multiple connections for practical reasons. As discussed below, there are many practical difficulties in determining which connections is to be the supported connection when consumers have more than one.

It is also seems very difficult, if not impossible, to determine if one connection is used for basics service (and thus eligible for support), and another connection is used for something other than basic service. The WUTC addressed this issue when rural ILECs opposed designation of a wireless carrier as an ETC for certain rural exchanges in Washington. Rural ILECs complained that wireless service is not used to provide basic service, but rather is used in addition to landline service to homes and businesses. We responded that we do not believe we should constrain rural citizens to supported communication only from their homes.²⁰ In circumstances where there is support for only one connection, it might be necessary to examine a consumer’s daily use of two or more connections in an effort to determine which qualifies for support. That would be an impossible task if it had to be accomplished by a monthly comparison of each consumer’s telecommunications habits.

How would this affect determinations of support based on embedded cost? Forward looking cost?

No comment.

Would COLR obligations be affected by a limitation of support to single connections?

See comment on carrier of last resort above.

What would be the impact on consumers? On ETCs? On ETCs’ ability to provide universal service?

Consumers of more than one connection will see higher prices if their second connection comes from a provider that has costs above the price charged for the supported connection. Some consumers may have to discontinue connections that are not provided at supported prices.

²⁰ *In the Matter of the Petition of RCC Minnesota (d/b/a Cellular One) for Designation as an Eligible Telecommunications Carrier*, Washington Util. & Transp. Comm’n. Docket No. UT-023033, Order Granting Designation as an Eligible Telecommunications Carrier (August 14, 2002). ¶¶ 48-50.

The effect on ETCs would be to make them compete to be the carrier that provides the supported connection. ETCs would have to comply with whatever administrative systems are created for separating supported service connections from unsupported service connections.

The effect on ETCs' ability to provide supported service would depend on the ability of an ETC to maintain a network based on a price structure that includes both supported and unsupported services.

Notice Section 22.

If support is limited to a single connection and a subscriber has two connections, how would one determine which is the supported connection?

The difficulty inherent in making that determination has been one reason for not choosing a program of universal service support for just one connection per consumer or business.

From an ETC's perspective, it would not appear to matter if each connection is of the same type (e.g., two residential, flat-rate connections) because no matter which is the supported connection, the total price for the two connections will be the same. However, in those cases the customers' bills should reflect each connection's price because accurate price information would assist customers in making choices when purchasing more than one connection.

If the connections are not the same, for example one is a flat business connection and the other is a "private line" (and both services are supported), then the price paid by the customer would vary depending on which connection is considered to be the supported connection. If both connections come from the same ETC, then the ETC could explain the difference and the customer would likely choose the designations that result in the lower total price. If the Commission were concerned that ETCs might have an incentive not to explain the price differences caused by such a determination, it could require ETCs to provided supported and non-supported services in a manner that results in the lowest price for customers.

When a customer receives service from two ETCs, the determination of which is the supported service could be left to the consumer and the responsibility placed on the consumer to inform the ETC that it is or is not the one providing the supported service. This approach might invite slamming, but the Commission has experience with slamming and can take measures to deter such behavior.

In the alternative, the responsibility could be placed on ETCs to share pricing information with each other and require ETCs to designate a connection as supported only if the effect of that will be to lower the total price the customer will pay for all connections that could be designated as supported.

Finally, the decision could be based on the least cost to the fund.

Should end user be an individual or a household?

The Act refers to “consumers” in the principle concerning access in rural and high-cost areas. 47 U.S.C. § 254(b)(3). If the rules permit support for one connection per consumer, then we predict that second connections to households will be placed in different names. We base this assertion on experience. Washington once had a price structure for businesses that had five or fewer connections that was lower on a per-connection basis than was the price when a business had six or more connections. Many small businesses created additional entities so that no entity ever ordered more than five connections. Unless the Commission is going to exclude support for business consumers altogether, it will have to consider what actions it must take to reduce supported connections for businesses. It might be successful in limiting support if it were to limit the number of supported connections to one per street address.

If supported connections were limited by household, would two unrelated individuals in a single dwelling receive only one supported connection?

This would depend on the Commission’s choice of definition of a household. It could determine that the type of household relationships created by college students sharing a house would not be a household for the purpose of limiting the number of supported connections. At the same time, it could define a household to include cohabitation in a manner similar to marriage as one that would receive support for only one connection. There are many options open to the Commission. We warn, however, against the practical difficulty and intrusiveness of determining service according to personal relationships.

Would limiting support to primary connections reduce incentives to construct second connections in high-cost areas? Create negative financial effect on incumbents?

No comment.

Should the Commission revise determinations of cost if it limits support to one connection? How?

The purpose of support is to preserve and advance universal service. If the Commission determines that support should be limited to one connection, then it would be consistent to limit support to that which is necessary to establish only one connection.

Without taking a position, our experience is that the total service, long-run, incremental cost (TSLIRIC) for a wireline network of only single connections is more

expensive to construct on a per-connection basis than a multi-line network, because of the loss of economies of scale.²¹

Notice Section 23.

If support is limited to a single connection, should the end user designate the connection to be supported?

See response to Notice Section 22, above.

How should that be done?

See response to Notice Section 22, above.

How would this affect the price for single-connection subscribers?

See response to Notice Section 22, above.

Should support depend on the type of connection designated by the end user?

No. Support should be based on the amount needed to compensate the ETC for the difference between its revenue and the cost to provide an affordable (supported) connection.

Notice Section 24.

Should there be support for a connection at a second residences?

No comment.

Notice Section 25.

Would a limitation on the number of supported connections provide an incentive to compete?

Where there are two ETCs, a limitation on the number of supported connections could provide an incentive for greater competition for the supported connection, but it may also reduce or eliminate competition. Where an ETC cannot continue in business in a service area without support, the loss of support that might result from its service being considered the secondary (unsupported) connection could mean the ETC would have to cease providing service at all. The result might be one ETC with no competitor.

²¹ *In the Matter of Determining Costs for Universal Service*, Washington Util. & Transp. Comm'n. Docket No. UT -980311, Tenth Supplemental Order Determining Costs, ¶¶ 56-65 (1998).

Would a limit on the number of supported connections be a barrier to entry?

Carriers may enter any market, even markets in which they will lose money. A limit would not be a barrier to entry; it might be a disincentive that no carrier would attempt to overcome.

Notice Section 26.

Is there a need to clarify the standards for ETC designation under the Act?

There is no need to clarify the standards for ETC designation under the Act because there is no ambiguity in 47 U.S.C. § 214(e)(2) concerning state commission designations of ETCs. The requirement to designate at least one common carrier upon request or upon its own motion is clear, as is the need for a public interest determination under some circumstances. The public interest standard is well known and used by every state commission in many circumstances, not just the designation of ETCs.

What factors should the Commission consider when it performs ETC designation under 214(e)(6)?

No comment.

Notice Section 27.

Is it advisable to establish permissive federal guidelines for states to use in designating ETCs pursuant to 47 U.S.C. § 214(e)(2)?

Congress delegated the designation of common carriers as ETCs to state commissions. The Fifth Circuit's opinion in Texas Office of Public Utilities Counsel is clear with respect to state commission authority under 47 U.S.C. § 214(e)(2), including the limitation implied in footnote 31. The opinion is also clear, in footnote 32, with respect to what it implies about the limitations on Commission jurisdiction. There is no reason for the Commission to establish guidelines.

What would be included?

No comment.

How does the Fifth Circuit's prohibition on additional eligibility criteria relate to creating guidelines?

No comment.

What effect does the current ETC designation system have on the emergence of competition?

No comment.

What factors do state commissions consider when evaluating whether a designation is in the public interest with respect to areas where there is a rural LEC designated?

We have focused on customers, not on companies,²² and have considered the twin goals of the Act, competition and the preservation and advancement of universal service. We have determined that designation of additional ETCs in areas served by rural telephone companies will result in providing the benefits of competition to consumers. Those benefits are increased attention to customer service, downward pressure on prices, and development of new products and services. We have also determined that additional designations will preserve and advance universal service. Our application of the public interest standard in the designation of an additional ETC in an area served by a rural telephone company has been approved by the Supreme Court of Washington.²³

If greater consistency in state public interest determinations is desirable, should the Commission provide guidance?

Application of the public interest standard is a common activity for state commissions. Congress assigned the designation of ETCs to state commissions and provided a well-known standard. Because state commissions are applying the public interest standard, there is no inconsistency and therefore no need for Commission guidance.

To what extent are similar universal service obligations or quality of service obligations not imposed on incumbent LECs and competitive ETCs?

²² See *Alenco* 201 F.3d at 620.

²³ See *In the Matter of the Petition of United States Cellular Corporation; USOC of Washington RSA-4, Inc.; Western Sub-RSA Ltd. Partnership; McDaniel Cellular Telephone Company; Oregon RSA No. 2 Limited Partnership; United States Cellular Operating Co. of Richland; Yakima, Washington MSA Limited Partnership for Designation as Eligible Telecommunications Carriers*, Washington Util. & Transp. Comm'n. Docket No. UT-970345, Third Supplemental Order Granting Petition for Designation as an Eligible Telecommunications Carrier (January 27, 2000), *affirmed sub nom* Washington Independent Telephone Association et al v. Washington Utilities and Transportation Commission, Supreme Court of Washington, No. 72428-8 (March 20, 2003) (2003 WL 1339064(Wash.)). See also *In the Matter of the Petition of RCC Minnesota, Inc., d/b/a Cellular One, For Designation as an Eligible Telecommunications Carrier*, Wash. Utilities and Transportation Comm'n. Docket No. UT-023033, Order Granting Petition For Designation As An Eligible Telecommunications Carrier (August 14, 2002); and *In the Matter of the Petition of Inland Cellular Telephone Company, d/b/a Inland Cellular, Eastern Sub-RSA Limited Partnership, and Washington RSA No. 8 Limited Partnership For Designation as an Eligible Telecommunications Carrier*, Washington Util. & Transp. Comm'n. Docket No. UT-023040, Order Granting Petition For Designation As An Eligible Telecommunications Carrier (August 30, 2002).

The WUTC applies the universal service requirements of the Commission, found generally at 47 C.F.R. § 54.100, *et. seq.* All ETCs must comply with those requirements.

The WUTC has stated it has the authority to set quality of service standards for ETCs.²⁴ We have not done so up to now because we have had no reason to set standards. That is, no complaints have been made and no customer has asked that we do so.

Some ETCs are subject to regulations of the WTUC that concern service quality. Similarly, some carriers that are not ETCs are subject to those same service quality regulations. The companies are not subject to those regulations because of their designation as ETCs; and those that are exempt from quality of service regulations are not exempt because of designation.

To the extent we apply requirements to ETCs, the requirements do not distinguish between so-called competitive ETCs and other ETCs (some of which may be ILECs).

We have begun to require carriers to provide service area maps in .shp format. That format is the file extension used for geographic information systems (GIS). This effort began with disaggregation of federal support for rural ILECs and the designation of two ETCs in 2002. The effort is ongoing. Maps of service areas in the .shp format permit carriers and others to determine the location of customers in service areas in order to confirm the correct level of disaggregated support.²⁵

Should any Commission guidelines differ depending on whether the rural exemption has been lifted in the area for which ETC status is sought?

Matters concerning the “rural exemption,” like ETC designation, were delegated by Congress to state commissions. 47 U.S.C. § 251(f). We do not think Commission guidelines are either necessary or appropriate.

Notice Section 28.

Do Commission requirements adequately ensure that that competitors have sufficient information about the geographic scope of incumbent disaggregation zones?

²⁴ *In the Matter of Yelm Telephone Company, et al., for Designation as an Eligible Telecommunications Carrier*, Washington Util. & Transp. Comm’n. Docket No. UT-970333-54 and 970356, Order Designating Eligible Telecommunications Carriers (1997), at p. 14.

²⁵ A full explanation of the value of .shp format maps in the context of universal service support can be found in our order on disaggregation of federal universal service support. See *In the Matter of Disaggregation of Federal Universal Service Support*, Washington Util. & Transp. Comm’n. Docket No. UT-013058 and 023020, Order Rejecting Disaggregation Filings By Asotin Telephone Company And CenturyTel, And Directing Rural ILECs To File Disaggregation Plans With The Commission Not Later Than August 23, 2002 (2002), at ¶¶ 33-40.

The experience of the WUTC is that all ETCs need better information about the geographic locations of connections (including address surrogates for connections). Study areas are composed of exchanges. To the extent study areas are used or exchanges are used as service areas, accurate maps of these geographic areas are either non-existent or very difficult to procure. The paper maps that exist generally contain a very low level of detail that makes it difficult to ascertain the location of a given connection.

Service areas for ETCs need not be study areas or exchanges. If an ETC is designated for a service area that is not the same geographic scope as a study area or an exchange, then it is imperative that maps of the service area be made available for use by ETCs, incumbents, USAC, regulators, and the public.

As stated above, the WUTC has required rural ILECs to create electronic maps of exchanges and has required two ETCs to create electronic maps of their service areas. Maps that are .gif or .jpg files are not any more useful than paper maps in determining the exact locations of the boundary of a service area. Maps that are .shp files permit users to incorporate the map with other GIS files so that service connection locations can be determined accurately in relation to service area boundaries.

What weight should states and the Commission place on the presence of such disaggregation zones when determining whether the designation of a second ETC is in the public interest?

A state commission must make its determination of a second ETC under the public interest standard. State commissions have substantial experience with this standard and can determine if the presence of a disaggregation zone adds any weight to a determination that a designation would be, or would not be, in the public interest.

The WUTC has designated two wireless carriers as ETCs for service areas that encompass the same geographic area as the carriers' cellular geographic service areas (CGSA). This was accomplished by making several designations for each carrier, most of which were designations for service areas that were identical to existing wireline exchange areas, but some of the designations were for areas within the CGSA of the carrier but which covered only portions of exchange areas. It was not essential to that decision to know that federal support would be disaggregated, but the disaggregation with respect to these designations, as with designations of service areas that are the same as exchange areas, results in more accurate distribution of portable federal universal service support.

III. Conclusion

The WUTC thanks the Commission and the Federal-State Joint Board on Universal Service for this opportunity to participate in this process. We look forward to continued participation as recommendations are developed.